

Federal Communications Commission

DA 02-2720

Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-123
Table of Allotments,)	RM-10139
FM Broadcast Stations.)	RM-10387
(Darien, Rincon and Statesboro,)	
Georgia))	
)	
Amendment of Section 73.202(b))	MM Docket No. 01-177✓
Table of Allotments)	RM-10196
FM Broadcast Stations.)	RM-10388
(Screven, Rincon, and Statesboro,)	RM-10389
Georgia; Palatka and Middleburg,)	
Florida))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 9, 2002

Released: October 18, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it *Notices of Proposed Rule Making* in two related dockets, MM Docket No. 01-123 ("*Notice I*"),¹ and MM Docket No. 01-177 ("*Notice II*").² *Notice I* was issued in response to a petition for rule making (RM-10139) filed by Bernice P. Hedrick requesting the allotment of Channel 262A at Darien, Georgia, as that community's second local FM transmission service. *Notice II* was issued in response to a petition for rulemaking (RM-10196) filed by International Systems Corp. ("ISC"), requesting the allotment of Channel 260A at Screven, Georgia, as that community's first local aural transmission service.

2. On July 30, 2001, the date by which comments and counterproposals were due in MM Docket No. 01-123, Radio Statesboro, Inc. ("Radio Statesboro") filed a counterproposal in MM Docket No. 01-123. That counterproposal (RM-10387) requested that Channel 261C1 be substituted for Channel 261C2 at Radio Statesboro's Station WMCD(FM), Statesboro, Georgia, and that Station WMCD be reallocated to Rincon, Georgia, as Rincon's first local aural transmission service, which is priority three of the FM allotments priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ Since the petition for rulemaking in MM Docket No. 01-177 was filed on June 5, 2001, and was mutually exclusive with the timely filed counterproposal in MM Docket No. 01-123 at the time that the counterproposal was filed, the petition for rulemaking filed in MM Docket No. 01-177 became conflicted with MM Docket

¹ *Darien, Georgia*, 16 FCC Rcd 12017(2001).

² *Screven, Georgia*, 16 FCC Rcd 14906(2001).

³ *Revision of FM Assignment Policies and Procedures* ("FM Priorities"), 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

No. 01-123 on July 30, 2001.⁴ In this light, we are consolidating these two dockets in this *Report and Order*.

3. The foregoing counterproposal tiled by Radio Statesboro in MM Docket No. 01-123 was also filed on September 24, 2001 in MM Docket No. 01-177. September 24, 2001, was the date upon which comments and counterproposals in MM Docket No. 01-177 were due. In addition, Renda Broadcasting Corp of Nevada (Renda) filed its own counterproposal on September 24, 2001, in MM Docket No. 01-177. Renda requested permission to downgrade Channel 260C, Station WGNE-FM, Palatka, Florida, to Channel 260C0 and to change Station WGNE-FM's community of license to Middleburg, Florida, which would provide Middleburg with its first local aural transmission service. We further observe that Bernice P. Hedrick, who tiled the original rulemaking petition in MM Docket No. 01-123, has requested that her petition for rulemaking be dismissed. That request includes a statement that she has not received and will not receive any consideration in connection with her request for dismissal, which we find complies with Section 1.420(j) of the Commission's Rules. Accordingly, her request is granted. Thus, at this point in time, we have a consolidated rulemaking proceeding involving ISC's original petition to allot Channel 260A to Screven, Georgia, and the two counterproposals tiled pursuant to Section 1.420(i) of the Commission's Rules by Radio Statesboro and Renda that are mutually exclusive with ISC's petition for rulemaking.

4. Since Renda's Middleburg proposal will provide a 70 dBu signal that **will** cover more than 50 percent **of** the Jacksonville Urbanized Area, Renda must provide a *Tuck*⁵ analysis demonstrating that Middleburg is sufficiently independent of the Jacksonville Urbanized Area that it would be justified in receiving a first local service preference under priority (3) of the *FM Priorities*⁶. Under the *Tuck* case, we examine such proposals by considering the signal population coverage, the size and proximity of the proposed community to the central city of the urbanized area, and the interdependence of the proposed community to the central city.⁷ The interdependence factor is the most important factor considered in

⁴ See *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993) and Section 1.420(d) of the Commission's Rules.

⁵ See *Hunrington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951), *RKO General, Inc.*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374.

⁶ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995)

⁷ In *Tuck*, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. The commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

making an allotment decision involving the proposed reallocation of a station to an urbanized area. Renda has provided sufficient information to demonstrate that Middleburg is an independent community based on the factors listed in *Tuck*.

5. With regard to the *Tuck* criteria. Middleburg is a Census Designated Place (CDP) listed in the 2000 U.S. Census with a population of 10,338. Renda states that Middleburg is located within 35 kilometers of the Jacksonville Urbanized Area. The facilities proposed by Renda would place a 70 dBu contour over 78 percent of the Jacksonville Urbanized Area. Renda asserts that the 1990 U.S. Census listed the population of Middleburg at 4,742, of which 249 persons, or a little over 5 percent of its residents, worked in Middleburg (factor 1 of the *Tuck* factors, *supra*, at note 1. The current population for Middleburg is 10,338, which is more than twice the population of 1990. Renda claims that it could not find any updated workforce figures for the 2000 U.S. Census. We observe that the 1990 U.S. Census data submitted by Renda indicates that 1,101 of 2,869 workers from Middleburg worked in their county of residence. We note that Middleburg is located in Clay County, while Jacksonville and its Urbanized Area are located in Duval County. Thus, it would appear that, in 1990, a large percentage of Middleburg's population worked outside the Jacksonville Urbanized Area.⁸ Nevertheless, given the lack of data concerning Middleburg's workforce in 2000, no finding, favorable or unfavorable, can be made regarding Middleburg's status under *Tuck* factor 1. As for local media serving Middleburg (*Tuck* factor 2). Middleburg is served by 3 local newspapers (two weekly newspapers and one newspaper that is published twice a week). Renda states that even though these newspapers serve other communities in addition to Middleburg, each of these newspapers contains advertisements from Middleburg businesses and none of these newspapers serve Jacksonville. Middleburg also has its own cable television company. We conclude that Middleburg deserves a favorable finding under *Tuck* factor 2. In addition, under *Tuck* factor 7, the extent to which the community (Middleburg) and the central city (Jacksonville) are part of the same advertising market, Middleburg also receives a favorable finding, because it has local media sources to which the residents of Middleburg can refer that are separate from Jacksonville advertising media.

6. As stated previously, Middleburg is a Census Designated Place located in Clay County, Florida, while Jacksonville is located in Duval County. Middleburg relies on Clay County for local government (factor 4 of the *Tuck* factors). The Clay County Commission, which is governed by a Board of Commissioners, manages the daily government of Middleburg. Middleburg has its own Volunteer Fire Department, but Middleburg is also served by the Clay County Fire Department. Thus, Middleburg is not dependent upon Jacksonville or Duval County, the county in which Jacksonville is located, for its municipal services (factor 8 of the *Tuck* factors). Further, Renda claims that Glenn Lassiter, who is the Commissioner representing Middleburg on the Clay County Board of Commissioners, has asserted that residents of Middleburg perceive their community as being separate from the Jacksonville Urbanized Area (factor 3 of the *Tuck* factors). Renda states that Middleburg has its own unique identity and history separate from that of Jacksonville and that Middleburg was a thriving community in 1850, whereas Clay County was created in 1858 by act of the Florida legislature. In addition, Middleburg has its own zip code and separate residential and business listings in a local telephone directory including Middleburg and several other communities, thus satisfying factor 5 of the *Tuck* factors. Middleburg has many small businesses, some of which have "Middleburg" in their name, several health care providers, and its own rehabilitation center, thus satisfying factor 6 of the *Tuck* factors. Thus, based upon the record evidence, we conclude that Renda is entitled to receive a first local service preference under priority (3) of the *FM Priorities* for providing the first local aural transmission service to Middleburg, Florida.

⁸ Cf. *Coolidge and Gilben, Arizona*. 11 FCC Rcd 3610 (1996)

7. Each of the three proposals in this proceeding would provide first local aural transmission service, which is priority 3 of the FM allotments priorities set forth in *FM Priorities*, *supra* at note 1. ISC's proposal to allot Channel 260A to Screven, Georgia, would provide a first local service to Screven, Georgia. Radio Statesboro's counterproposal would provide a first local service to Rincon, Georgia, while retaining local service to Statesboro, Georgia. Renda's counterproposal would provide a first local service to Middleburg, Florida, while retaining local service to Palatka, Florida. Although the counterproposals filed by Radio Statesboro and Renda are not mutually exclusive with each other, they are each mutually exclusive with ISC's proposal to serve Screven, Georgia. Therefore, we **must** determine whether the TSC proposal should be preferred to either or both **of** the counterproposals pursuant to the allotment priorities set forth in *FM Priorities*. Since both Rincon (2000 U.S. Census of 4,376) and Middleburg (2000 U.S. Census of 10,338) have greater populations than Screven (2000 U.S. Census of 702), providing first local aural transmission services to Rincon and Middleburg have priority over providing such service to Screven under established Commission precedent.'

8. Radio Statesboro and Renda filed their requests to change their communities of license pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest."

9. We believe that the public interest would be served by upgrading Channel 261C2, Station WMCD, Statesboro, Georgia to Channel 261C1 and changing Station WMCD's community of license from Statesboro to Rincon, Georgia, because Rincon (2000 U.S. Census of 4,376) would receive its first local aural transmission service. Radio Statesboro's proposal would result in a gain area of over 10,500 square kilometers comprising 427,194 persons and would not result in the creation **of** any white or gray areas. The reallocation of Channel 261C1 to Rincon would not deprive Statesboro **of** its sole local aural transmission outlet because Statesboro would continue to be served by four local aural transmission services. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WMCD to specify operation on Channel 261C1 at Statesboro, Georgia.

10. We believe that the public interest would be served by downgrading Channel 260C, Station WGNE-FM, Palatka, Florida, to Channel 260C0 and changing Station WGNE-FM's community of license from Palatka to Middleburg, Florida, because Middleburg (2000 U.S. Census of 10,338) would receive its first local aural transmission service. Renda's proposal would result in a gain area of 4,567 square kilometers with a population of 799,704, while the loss area would be 5,090 square kilometers with a population of 373,202." All of the loss and gain areas would continue to receive five or more aural services and thus are considered to be adequately served. The reallocation of Channel 260C0 to Middleburg would not deprive Palatka of its sole local aural transmission outlet because Palatka would continue to be served by three local aural transmission services. Therefore, in accordance with the

⁹ See *Blanchard, Louisiana and Stephens Arkansas*, 10 FCC Rcd 9828.9829 (1995) and *Rose Hill et al., North Carolina*, 11 FCC Rcd 21223,21231 (1996), *affirmed*, 15 FCC Rcd 10739 (2000), *application for review denied*, 16 FCC Rcd 15610 (2001).

¹⁰ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990).

¹¹ The gain and **loss** areas do not include water areas

provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WGNE-FM to specify operation on Channel 260C0 at Middleburg, Florida. .

11. Channel 261C1 can be allotted to Rincon, Georgia, in conformity with the technical requirements of the Commission's Rules, utilizing Radio Statesboro's requested site at the coordinates of 32-08-35 North Latitude and 81-42-14 West Longitude, with a site restriction of 47.3 kilometers (29.4 miles) west of Rincon. Channel 260C0 can be allotted to Middleburg, Florida, in conformity with the requirements of the Commission's Rules, at the coordinates of 29-59-40 North Latitude and 81-19-39 West Longitude, with a site restriction of 52.1 kilometers (32.4 miles) east of Middleburg.

12. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS ORDERED**, That effective December 2, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, **IS AMENDED** for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Statesboro, Georgia	275C3
Rincon, Georgia,	261C1
Middleburg, Florida	260C0
Palatka, Florida	-----

13. **IT IS FURTHER ORDERED**, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Radio Statesboro, Inc. for Station WMCD(FM), Statesboro, Georgia, **IS MODIFIED** to specify operation on Channel 261C1 at Rincon, Georgia, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application **for** a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

14. **IT IS FURTHER ORDERED**, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Renda Broadcasting Corp. of Nevada for Station WGNE-FM, Palatka, Florida, **IS MODIFIED** to specify operation on Channel 260C0 at Middleburg, Florida, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

15. IT IS FURTHER ORDERED That the petition for rule making filed by Bernice P. Hedrick (RM-10139) in MM Docket No. 01-123, IS DISMISSED, as requested.

16. IT IS FURTHER ORDERED That the petition for rule making filed by International Systems Corp. (RM-10196) in MM Docket No. 01-177 IS DENIED.

17. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Radio Statesboro, Inc., licensee of Station WMCD(FM), and Renda Broadcasting Corp. of Nevada, licensee of Station WGNE-FM, are required to submit rule making fees in addition to the fees required for the applications to effect the changes in their communities of license.

18. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

19. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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